

Public Chapter 220

SENATE BILL NO. 1531

By Crutchfield

Substituted for: House Bill No. 440

By Fowlkes, Chumney, Fitzhugh

AN ACT To amend Tennessee Code Annotated, Title 47, Chapter 9, relative to continuation statements under Article 9 of the Uniform Commercial Code.

WHEREAS, Tennessee Code Annotated, Section 47-9-403, with respect to the duration of financing statements under Article 9 of the Uniform Commercial Code as adopted in Tennessee (Tennessee Code Annotated, Title 47, Chapter 9) was amended by 1996 Public Act 1073; and

WHEREAS, Certain clarifying and technical changes to Tennessee Code Annotated, Section 47-9-403, are advisable to clarify the effect of such amendment; and

WHEREAS, It is the desire of the Tennessee General Assembly to clarify Tennessee Code Annotated, Section 47-9-403, as so amended; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-9-403, is amended by deleting subsection (2) in its entirety and by substituting instead the following:

- (2)(a) A filed financing statement that states a maturity date of more than five (5) years but not more than twenty (20) years from the date of filing is effective until such maturity date, subject to subsection (2)(e) below.
- (b) A filed financing statement that states that the obligations secured are payable on demand is effective for five (5) years from the date of filing, subject to subsection (2)(e) below.
- (c) Except as provided in subsection (2)(a) or (b) or in subsection (6), a filed financing statement is effective for five (5) years from the date of filing, subject to subsection (2)(e) below.
- (d) If a security interest perfected by filing exists and if the filing of a continuation statement is enjoined or otherwise stayed in insolvency proceedings commenced by or against the debtor, the security interest shall be deemed perfected until the termination of the injunction or stay and thereafter for a period of sixty (60) days even if the filing has lapsed and the financing statement removed from the files or until the expiration of the applicable effective filing period as determined under subdivision

(2)(a), (b) or (c), whichever occurs later, subject to subsection (2)(e) below.

- (e) The effectiveness of a filed financing statement lapses on the expiration of the applicable effective filing period as determined under subdivision (2)(a), (b), (c) or (d), unless a continuation statement is filed prior to the lapse or is otherwise timely filed. A continuation statement filed within the sixty (60) days after the end of the effective period stated in subsection (2)(a), (2)(b) or (2)(c) shall be retroactively effective as of the last date to which the filing previously was effective. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

SECTION 2. Tennessee Code Annotated, Section 47-9-403, is further amended by deleting the first two sentences of subsection (3) and by substituting instead the following:

(3) A continuation statement may be filed by the secured party at any time during (A) the last six (6) months that the financing statement (as it may have previously been continued) is effective; or (B) during the sixty (60) days immediately following the end of the effective period of the financing statement (as it may have previously been continued). A continuation statement filed during such sixty (60) day period shall have the same effect as if filed during the six (6) months preceding such period. Upon timely filing of the continuation statement, the effectiveness of the financing statement, as previously amended, is continued for five (5) years after the last date to which the filing was previously effective.

SECTION 3. Tennessee Code Annotated, Section 47-9-403, is further amended by adding as a new subsection (10), the following:

- (10)(a) For purposes of calculating the appropriate time for filing continuation statements filed on or after June 1, 1997, that relate to financing statements filed and continued before such date, (i) an original financing statement described in subsection (2)(b) or (2)(c) shall be deemed to have been effective for successive effective filing periods of five (5) years each, beginning with the date of the original filing, and (ii) an original financing statement described in subsection (2)(a) shall be deemed to have been effective until the stated maturity date and then for successive effective filing periods of five (5) years each, beginning with the stated maturity date.
- (b) Except to the extent, if any, that the rights of intervening third parties acting in reasonable reliance on a putative lapse have been impaired, a continuation statement filed between October 1, 1983 and June 1, 1997, shall be deemed to have been timely filed as follows:
 - (i) with respect to an original financing statement described in subsection (2)(b) or (2)(c), a continuation statement shall be deemed to have been timely filed if it was filed within (A) six (6) months before or sixty (60) days after the expiration of each five (5) year period in a series of such periods beginning with the date of the original filing, or (B) within eight (8) months before the expiration of each period of five (5) years and sixty (60) days in a

series of such periods beginning with the date of the original filing; or

- (ii) with respect to an original financing statement described in subsection (2)(a), a continuation statement shall be deemed to have been timely filed if it was filed within (A) six (6) months before or sixty (60) days after the expiration of each five (5) year period in a series of such periods beginning with the stated maturity date, or (B) within eight (8) months before the expiration of each period of five (5) years and sixty (60) days in a series of such periods beginning with the stated maturity date.
- (c) For purposes of calculating the time in which a continuation statement was to have been filed under Section 47-9-403(3) or 47-9-403(2)(c), as each was in effect between October 1, 1983 and June 1, 1997, any period stated as two (2) months (or consisting of the last two (2) months of any period stated as eight (8) months) may be calculated as sixty (60) days or as two (2) months, whichever is greater, except to the extent, if any, that the rights of intervening third parties acting in reasonable reliance on a putative lapse have been impaired.

SECTION 4. This act shall take effect June 1, 1997, the public welfare requiring it.